IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No. 1183 of 2002
Date of Decision: February 17, 2010

P.Sahaya Rai .....Petitioner

Versus

State (UT Administration) Chandigarh .....Respondent

Coram: Hon'ble Mrs. Justice Sabina

Present: Mr.Vishal Aggarwal, Advocate for the petitioner.
Mr.Gautam Kaile, Advocate for
Mr.Rajiv Sharma, Advocate for UT Chandigarh.

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Sabina, J.

Petitioner was convicted for an offence under Sections 279 and 304-A of the Indian Penal Code (`IPC' for short) vide judgment dated 15.3.1997 passed by the Judicial Magistrate Ist Class Chandigarh.Vide order of even date, petitioner was sentenced to undergo rigorous imprisonment for a period of six months for commission of offence punishable under Section 279 IPC and accused-petitioner was further directed to undergo rigorous imprisonment for a period two years for commission of offence punishable

under Section 304-A IPC. Both the sentences were ordered to run concurrently. Aggrieved by the same, petitioner preferred an appeal and the same was dismissed by the Additional Sessions Judge, Chandigarh vide judgment dated 5.6.2002 Hence, the present revision petition by the petitioner-P.Sahaya Rai.

The brief facts of the case, as noticed by the Appellate Court in paras 2 to 5 of its judgment, are as under:-

> "2. The story of the prosecution garnered from the record is recapituated hereunder:-
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> On 24.9.1995 complainant Smt. Saminder Kaur alongwith her daughter Miss Avineet Kaur aged 6 years and son Navneet Singh aged 4 years had gone to St Anne's School Sector 32 Chandiarh to attend a religious function. At around 11.30 a.m. her daughter Avineet Kaur expressed desire to urinate. She took her to the ground inside the school in front of the main gate. While they both were coming back and her daughter was standing at the edge of the road, while she was 3-4 steps behind her, a jeep bearing registration No. CH-01-B-3293 came from the side of gate of the school which was being driven by a Hindu gentleman dark complexioned in a rash and negligent manner and without giving horn and straight -away hit her daughter. The jeep crossed over her and then stopped at some distance.
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> 3.The small girl was badly injured and became unconscious. She was taken to the PGI hospital in the same jeep, but was declared brought dead by the doctor. Smt. Saminder Kaur, mother of the deceased child lodged a report with the police narrating the entire

incident and also stating that the accident occurred due to rash and negligent driving of the jeep by its driver.

4. On the basis of statement of complainant Smt.Saminder Kaur, a case under Section 279, 304-A of the Indian Penal Code was registered and investigation commenced; the accused was arrested; statement of the witnesses were recorded; inquest report of the deceased was prepared and after completion of necessary formalities the accused was sent up to the court for trial.

7.After being supplied with the copies of documents relied upon by the prosecution the accused was charge-sheeted under Sections 279 and 304-A of the Indian Penal Code to which he pleaded not guilty and claimed a regular trial."

Learned counsel for the petitioner has submitted that a complete reading of the statement of the alleged eye witness PW1 Saminder Kaur revealed that in fact, she had not witnessed the accident. The medical evidence did not support the ocular version. Learned counsel has further submitted that the deceased child had suddenly came in front of the vehicle as a result of which she suffered injuries and later died.

Learned counsel for the Administration has submitted that the prosecution has been successful in proving its case.

After hearing the learned counsel for the parties, I am of the opinion that the present petition deserves to be allowed.

In the present case, PW1 Saminder Kaur, mother of the deceased is the only eye witness of the alleged occurrence. Although in her examination-in-chief, she has deposed that the jeep in question was being driven in a rash and negligent manner by the petitioner and struck against

her daughter and she was run over by the jeep. Thereafter, the injured was taken for treatment to PGI Chandigarh where she was declared "brought dead". In her cross-examination, she deposed that she did not see the accident but she saw her child who had fallen down. She could not say if there was any accident with the vehicle. It is correct that she had not gone to PGI in the jeep in which her child was taken to the hospital. However, she had gone to PGI in a different vehicle.

As per the post mortem report, the cause of death of the deceased was shock and hemorrhage of head injury. A perusal of the post mortem report does not lead to an inference that the deceased had been crushed under the vehicle. Moreover, in case PW1 had witnessed the accident, she would have gone with her daughter in the same jeep to the hospital. The fact that PW1 had not gone to PGI in the same jeep in which her daughter was taken leads to an inference that she was not present at the spot and had not witnessed the accident. The possibility that she was later on introduced as a witness to the accident, in the facts and circumstances of the case, cannot be ruled out.

In the present case, the petitioner has not denied the factum of accident but has taken the plea that the accident had occurred due to fault of the child. In this regard, DW1 Jude and DW2 Anup Kumar have deposed that in the complex, the jeep was being driven very slowly as there was a big gathering in the school due to a religious satsang. The child had suddenly struck against the left front side of the jeep. In the facts and circumstances, the plea taken by the petitioner appears to be probable. In these circumstances, the Courts below erred in convicting and sentencing the petitioner under Sections 279 and 304-A IPC.

Accordingly, this petition is allowed. The impugned judgments of the Courts below are set aside. The petitioner is acquitted of the charge framed against him.

(Sabina)
Judge

February 17, 2009
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